SUPREME COURT, U.S.
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No. 92-823

In The

Supreme Court of the United States

October Term, 1992

LUCILLE QUALLS WOODS,

Petitioner,

v.

DUNLOP TIRE CORPORATION,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Second Circuit

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Did the court below correctly rule that the well-settled principles of res judicata operate to bar a plaintiff's Title VII action where the plaintiff brought a prior action against her employer in the same federal district court on the same cause of action, which action was dismissed with prejudice pursuant to Rule 56 of the Federal Rules of Civil Procedure; where the plaintiff could have raised her Title VII claim in the earlier action or, in the alternative, could have preserved the claim raised in the earlier action and then subsequently joined it with her Title VII claim; but where the plaintiff chose instead to pursue one suit against her former employer, await the outcome of administrative proceedings, and then sue separately on her Title VII claim?

RULE 29.1 LISTING

Respondent's parent company is:

Sumitomo Rubber Industries, Ltd.

Respondent has no subsidiaries or affiliates to list pursuant to Rule 29.1.

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MISCELLANEOUS

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Respondent Dunlop Tire Corporation respectfully requests that this Court deny the petition for writ of certiorari seeking review of the Second Circuit's opinion in this case. That opinion is reported at 972 F.2d 36 (1992).

STATEMENT OF THE CASE

Respondent refers this Court to the Second Circuit's opinion reproduced at pages A-1 through A-23 of the Petition (albeit with typographical errors and some minor omissions) for an accurate statement of the facts and procedural history of this case.

STATUTORY PROVISIONS INVOLVED

42 U.S.C. § 2000e-5(f)(1)

> If within thirty days after a charge is filed with the Commission or within thirty days after expiration of any period of reference under subsection (c) or (d) of this section, the Commission has been unable to secure from the respondent a conciliation agreement acceptable to the Commission, the Commission may bring a civil action against any respondent not a government, governmental agency, or political subdivision named in the charge. In the case of a respondent which is a government, governmental agency, or political subdivision, if the Commission has been unable to secure from the respondent a conciliation agreement acceptable to the Commission, the Commission shall take no further action and shall refer the case to the Attorney General who may bring a civil action

against such respondent in the appropriate United States district court. The person or persons aggrieved shall have the right to intervene in a civil action brought by the Commission or the Attorney General in a case involving a government, governmental agency, or political subdivision. If a charge filed with the Commission pursuant to subsection (b) of this section is dismissed by the Commission, or if within one hundred and eighty days from the filing of such charge or the expiration of any period of reference under subsection (c) or (d) of this section, whichever is later, the Commission has not filed a civil action under this section or the Attorney General has not filed a civil action in a case involving a government, governmental agency, or political subdivision, or the Commission has not entered into a conciliation agreement to which the person aggrieved is a party, the Commission, or the Attorney General in a case involving a government, governmental agency, or political subdivision, shall so notify the person aggrieved and within ninety days after the giving of such notice a civil action may be brought against the respondent named in the charge (A) by the person claiming to be aggrieved or (B) if such charge was filed by a member of the Commission, by any person whom the charge alleges was aggrieved by the alleged unlawful employment practice. Upon application by the complainant and in such circumstances as the court may deem just, the court may appoint an attorney for such complainant and may authorize the commencement of the action without the payment of fees, costs, or security. Upon timely application, the court may, in its discretion, permit the Commission, or

> the Attorney General in a case involving a government, governmental agency, or political subdivision, to intervene in such civil action upon certification that the case is of general public importance. Upon request, the court may, in its discretion, stay further proceedings for not more than sixty days pending the termination of State or local proceedings described in subsection (c) or (d) of this section or further efforts of the Commission to obtain voluntary compliance.

REASONS WHY THE PETITION SHOULD BE DENIED

There exists no compelling reason to justify the granting of a writ of certiorari. As will be discussed below, the Court of Appeals fully considered and correctly decided the issues before it, and its decision is not in conflict with either the decisions of the United States Supreme Court or the decisions of the various circuit courts of appeals.[1]

The rule of res judicata is that "a valid, final judgment, rendered on the merits, constitutes an absolute bar

[1] Moreover, neither the decision of the Court of Appeals nor the record raises the "Question Presented" in the Petition. The Petitioner's question asserts that the court's decision works to "deny a plaintiff with a meritorious claim a full and fair opportunity to be heard" where the administrative agencies have found probable cause to believe that discrimination has occurred. First, the underlying merits of Petitioner's Title VII claim have not been ruled upon, nor did the EEOC issue a probable cause finding. Second, as discussed below, Petitioner had a full and fair opportunity to be heard on her Title VII claim; she simply did not avail herself of this opportunity.

to a subsequent action between the same parties . . . upon the same claim or demand. It operates to bind the parties both as to issues actually litigated and determined in the first suit, and as to those grounds or issues which might have been, but were not, actually raised and decided in that action." *Saylor v. Lindsley*, 391 F.2d 965, 968 (2d Cir. 1968). That a particular issue was not determined in the first proceeding is of no consequence. Res judicata is an absolute bar "not only as respects matters actually presented to sustain or defeat the right asserted in the earlier proceeding, 'but also as respects any other available matter which might have been presented to that end.' " *Chicot County Drainage District v. Baxter State Bank*, 308 U.S. 371, 378 (1940) (citations omitted).

The Court of Appeals properly concluded that Petitioner's action is barred by res judicata. All of the elements of claim preclusion are inarguably present. Indeed, Petitioner does not contest the Court of Appeals' determination in this regard. Her first and second lawsuits (hereinafter *"Woods I"* and *"Woods II"*, respectively) are successive actions, pertaining to the same transaction or wrong, arising out of the same facts, seeking to vindicate the same right, and requesting the same relief. It makes no difference that Petitioner in *Woods I* charged Respondent with violating the collective bargaining agreement in discharging her and in *Woods II* is charging Respondent with violating Title VII for this same action.[2] Because the

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[2] Petitioner erroneously suggests at page 11 of her Petition that her first lawsuit involved merely a review of an adverse arbitration decision. In a hybrid section 301 action such as *Woods I*, the plaintiff must show that her discharge was contrary

factual predicate is the same, the two actions involve the same cause of action and are therefore, duplicative for res judicata purposes. *E.g., Estate of Young v. Williams*, 810 F.2d 363, 365 (2d Cir. 1987) (res judicata "precludes raising any claim arising from facts substantially identical to those pled in a prior lawsuit that has been concluded by a final judgment"); *Berlitz Schools of Languages of America, Inc. v. Everest House*, 619 F.2d 211, 215 (2d Cir. 1980) (the determination of whether claims are duplicative for res judicata purposes "hinges upon the factual predicate of the several claims asserted"); *Expert Electric, Inc. v. Levine*, 554 F.2d 1227, 1234 (2d Cir.), *cert. denied*, 434 U.S. 903 (1977) ("it is the facts surrounding the transaction or occurrence which operate to constitute the cause of action, not the legal theory upon which a litigant relies"); *see also* Restatement (Second) of Judgments § 24, Comment (c) (1982).

Thus, as concluded by the court below, a straightforward application of the rule of res judicata bars Petitioner's action since she could have raised and resolved her Title VII claim in *Woods I*. She was aware of the claim as early as July 31, 1985, when she filed her charge of discrimination with the EEOC. *Woods I* was not dismissed until June 22, 1988, almost three years later. The district court, having jurisdiction over Title VII claims, could have resolved her discrimination claim during *Woods I*. 42

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to the contract and is therefore, entitled to relitigate the underlying merits of her claim. *Hines v. Anchor Motor Freight, Inc.*, 424 U.S. 554, 568-71 (1976). Accordingly, Petitioner was afforded a *de novo* determination on her discharge claim in *Woods I*.

U.S.C. § 2000e-5. Petitioner, however, made no attempt to include the Title VII claim in her earlier action.

Petitioner nevertheless argues, as she did before the Court of Appeals, that she should not be bound by the preclusive effect of *Woods I* because her charge of discrimination was still in the administrative process when judgment was entered in *Woods I*. As noted by the court below and conceded by Petitioner, however, Title VII's administrative exhaustion requirement did not preclude the Petitioner from raising her discrimination claim in *Woods I*. Under 42 U.S.C. § 2000e-5(f), complete exhaustion of the administrative process is not required; an aggrieved employee may file a civil action 180 days after the initiation of the administrative process. *Occidental Life Insurance Company v. EEOC*, 432 U.S. 355, 361 (1977) (a complainant may elect to circumvent the EEOC procedures and seek relief through a private enforcement action in district court after 180 days). Consequently, Petitioner could have raised her discrimination claim by January 27, 1986 – 180 days after filing her charge – less than two months after *Woods I* was filed. 42 U.S.C. § 2000e-5(f) (after 180 days from the filing of the charge, the employee may file a civil action); *Fed.R.Civ.P.* 15(a) (leave to amend shall be freely given when justice so requires); *see also Kremer v. Chemical Construction Corporation*, 456 U.S. 461, 465 n. 3 (1982); *Johnson v. Railway Express Agency, Inc.*, 421 U.S. 454, 458 (1975).

Petitioner has cited no authority which even marginally supports her request to be relieved of the obligations imposed on every litigant by the doctrine of res

judicata. Instead, she simply argues that a Title VII plaintiff should not be required to chose between "either leaving their charges in the administrative process, hoping in the meantime there will be no adverse judgment on other claims which will preclude their Title VII claims, or asking for a right to sue letter and abandoning the administrative mechanism in order to join all claims in a single lawsuit." Petition at 7-8. Such a choice, she claims, is inconsistent with Congress' intent in enacting Title VII.

The Court of Appeals likewise properly rejected this argument. Neither the language nor legislative history of Title VII evidences an intent to displace the traditional rules of res judicata insofar as judicial determinations are concerned. *See Kremer,* 456 U.S. at 461. In fact, there is legislative history supporting the application of res judicata to Title VII cases. *Id.* at 475-476. Hence, although Congress intended voluntary compliance to be the preferred means of resolving Title VII disputes, Congress has not demonstrated any intention to override the rules of preclusion.

Moreover, requiring a plaintiff to join all her claims in a single lawsuit is not inconsistent with Congress' intent that "recourse to the private lawsuit will be the exception and not the rule," 118 Cong. Rec. 7168 (1972), inasmuch as the obvious desire was that litigation be avoided, not resorted to twice. Furthermore, application of the normal preclusion rules to Title VII litigation will not eliminate the possibility of informal resolution of the complaint. For 180 days the state or federal agency has exclusive jurisdiction over the charge and may attempt informal resolution during that period. 42 U.S.C. § 2000e-5(f)(1). Indeed, the statutory language indicates

that Congress intended for the administrative process to be completed within the 180-day period. *See id.* Even more significant, however, is the fact that Congress provided that a court may stay proceedings in an action for up to 60 days pending the termination of state or local proceedings or "further efforts of the Commission to obtain voluntary compliance." *Id.* Apparently then, Congress contemplated the possibility of an individual initiating a private lawsuit before conclusion of the administrative process and determined that the concerns raised by Petitioner could adequately be addressed through a stay of the proceedings. There simply is no support for the proposition that application of the preclusion rules will frustrate Congressional intent or result in unnecessary litigation.

Nor, as concluded by the Court of Appeals, does Congressional preference for informal resolution of Title VII claims excuse compliance with general rules governing federal litigation. In reaching this conclusion, the court relied upon *Johnson v. Railway Express Agency*, 421 U.S. 454 (1975), *Miller v. United States Postal Service*, 825 F.2d 62 (5th Cir. 1987), and *Bailey v. USX Corporation*, 658 F.Supp. 279 (N.D. Ala. 1987), *aff'd*, 850 F.2d 1506 (11th Cir. 1988). The court also cited *Pirela v. Village of North Aurora*, 935 F.2d 909 (7th Cir.), *cert. denied*, 112 S.Ct. 587 (1991).

In *Johnson*, the Supreme Court rejected this preference for voluntary compliance as well as the same concerns raised herein by Petitioner as a basis for tolling the running of a statute of limitations. There, the plaintiff argued that the limitations period on his section 1981 claim should be tolled during the pendency of his Title VII charge in the administrative process since any other

result "would force a plaintiff into premature and expensive litigation that would destroy all chances for administrative conciliation and voluntary compliance." 421 U.S. at 465. While recognizing that such a result was conceivable, the Court nonetheless rejected the plaintiff's argument that he was entitled to special treatment because he could have protected his 1981 claim by filing timely but simply failed to do so: "We find no policy reason that excuses petitioner's failure to take the minimal steps necessary to preserve each claim independently." *Id.* at 466.

The courts in *Miller* and *Bailey* each held, as did the court below, that the pendency of administrative proceedings on a charge of discrimination does not exempt a Title VII claim from the bar of res judicata. Accordingly, both of these courts precluded its respective plaintiff from pursuing his discrimination claim in a subsequent action despite the fact that the administrative agency had not completed its investigation before resolution of the plaintiff's first action. As reasoned by the court in *Bailey*, "This court does not see any Title VII philosophy, much less statutory language, which would grant [the plaintiff] an exception to the rule of res judicata." 658 F.Supp. at 281-82. Thus, the court's decision is in accord with Supreme Court precedent as well as the decisions of the various courts of appeals.

Finally, with respect to Petitioner's suggestion that she could not join her claims in one action because she was forced to bring her first action prior to the completion of the EEOC administrative process due to the six-month statute of limitations on that claim, the court properly concluded that Petitioner "had two available courses

she could have followed in order to avoid the sting of res judicata." A-20-A-21 of Petition. First, she could have filed the first action and then sought a stay in the district court pending the outcome of her Title VII administrative proceedings. Upon completion of the administrative process, she could have joined the Title VII claim with the pending claim by amending her complaint. *See Fed.R.Civ.P.* 15(a) (leave to amend "shall be freely given"). Second, Petitioner could have filed the first action, requested a right to sue notice after 180 days, and then amended the complaint to include her Title VII claim. Given that Petitioner could have, had she chosen either alternative, preserved her Title VII claim, the court correctly found that there was "no reason to excuse [Petitioner's] failure to take these minimal steps necessary to preserve each claim independently," and accordingly, concluded that her Title VII claim is not exempt from the bar of res judicata.

CONCLUSION

For these reasons, the petition for writ of certiorari should be denied.

Respectfully submitted,

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